

# Children's Safe Product Act (CSPA) Reporting Requirements

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## Pilot Rule Development Process

The CSPA requires manufacturers of children's products to collect and submit to Ecology data on the use of chemicals of concern in their products. Collection and analysis of data can be an expensive proposition, both for those who submit the information and those who analyze it. Consequently, Ecology decided to gather as much input as possible from those impacted by the law as part of our rulemaking to implement the law. Two different, yet related processes were used to gather this input: (1) an advisory group and (2) a pilot rule project.

The details of both processes and the input they created are documented on the web site: <http://www.ecy.wa.gov/programs/swfa/rules/ruleChildSafe.html>.

The purpose of this report is to highlight the key issues raised by stakeholders during both processes, and to describe how we addressed these issues in the preliminary draft of the rules. Ecology used information gathered during both these processes to inform revisions of the draft pilot rule, published in January 2010.

The regulatory fairness act, Chapter 19.85 RCW, allows agencies to conduct pilot rulemaking in lieu of many of the more typical procedural requirement of the Administrative Procedures Act (Chapter 34.05, RCW). However, in this case, Ecology entered into pilot rulemaking solely to encourage input from the regulated community. Ecology intends to follow all the steps in rulemaking, as posted on our internet site.

## Key Issues and Ecology Decisions

Below are the issues raised by stakeholders where varying approaches were suggested. In each case, we provide a short description of the issue, how the issue is addressed in the preliminary draft rule and our rationale for that choice.

1. Three different views were expressed regarding the purpose of the reporting requirement to collect data:
  - a. For future risk assessments;
  - b. To target chemicals for future alternative assessments; or
  - c. To allow consumers to make informed purchasing decisions.

The preliminary draft rule reporting requirements are designed to collect data to help Ecology and manufacturers identify opportunities to conduct alternative assessments. This decision is based on Ecology's belief that spurring the identification and use of safer alternatives for chemicals of concern is the best way to make children's products safer.

Risk assessment is a valuable tool that manufacturers and regulators can use to evaluate the risk of a specific chemical in a specific product. It is a way to answer this question- "how much of a specific chemical can be present without posing a known risk?"

Alternative assessment is an evolving tool that can help manufacturers and regulatory agencies identify safer alternatives for chemicals of concern resulting in reduced use of these chemicals in the supply chain. It has the potential to affect many products.

The collected information on the presence of chemicals of concern in products can also be provided to consumers without an accompanying risk or alternative assessment. Ecology believes this approach will result in confusion about the safety of the product in that consumers may inappropriately believe that the mere presence of a chemical of concern means the product is not safe.

2. Three different views were expressed regarding what concentration of chemicals of concern in children's products should trigger the reporting requirement:

- a) Any amount;
- b) Only concentrations which would result in known harmful exposure from the product; or
- c) Concentrations which indicate intentional use.

The preliminary draft rules are focused on intentional use of chemicals of concern. Ultimately, Ecology wants to encourage manufacturers to move away from their use of chemicals of concern AND move toward safer alternatives.

Reporting on any amount of a chemical of concern will necessarily include data on the presence of contaminants that were not intentionally added and do not provide any functional purpose in the product. Safer alternative assessment focuses on replacing the function of a particular chemical with a less toxic alternative. In addition, such a data set will be likely to be prohibitively expensive for manufacturers to report and for Ecology to manage at this time.

Ecology explored establishing reporting trigger levels for each chemical based on its potential to result in harmful exposures from its use in children's products. Much of the needed data for such an evaluation is not available. Just as importantly, such an approach does not include any consideration of multiple potential sources of exposure or long term environmental exposure.

3. Two different views were expressed regarding when **any** reporting requirement should apply irrespective of the amount in the product:

- a) The reporting requirement should only apply when a chemical has been shown to cause harm as used in a specific children's product; or

- b) The reporting requirement should apply when a chemical of high concern is present in the product.

The Act established the criteria for reporting as the presence of the chemical in the product and the preliminary draft rules reflect this direction. Requiring a demonstration of harm in order to collect information about a chemical on the reporting list creates a situation where Ecology bears the burden of demonstrating harm, and at the same time prevents the agency from obtaining the data needed to make such a demonstration. This approach is similar to the federal policy expressed in the Toxic Substances Control Act (TSCA) and is a key reason TSCA is not seen as a success.

4. Two different views were expressed regarding the option of phasing-in the reporting requirement based on the size of the company:

- a) Everyone should be subject to the same reporting schedule; or
- b) Larger companies (those with the most individual market share) should report first, with smaller companies reporting later.

The preliminary draft rules include a system to phase-in the reporting requirement. This system is based on the size of the company but it also includes a tiered system that adds other indicators of potential exposure such as products that are intended to be placed in the child's mouth, rubbed on their skin or are marketed to children under the age of 3. Stakeholders appear to be in agreement on the tiered system based on these types of indicators.

Ecology believes the size of the company is a reasonable, though certainly not infallible, indicator of the potential for a child to come into contact with the product containing a chemical of concern. Gross sales are an indicator of a manufacturer's market share, which is related to how many children use their products.

Requiring all manufacturers to report at the same time will place an unnecessary burden on the smallest companies and will likely result in more data than the agency has resources to manage.

5. Two different views were expressed regarding the status of reported information:

- a) The reported information **should** be considered confidential business information; or
- b) The reported information **should not** be considered confidential business information.

The Act did not include any changes to Washington's laws regarding confidential business information. Therefore, the preliminary draft rules address this issue by allowing manufacturers to request that certain information be considered as confidential consistent with existing law. Most information that is submitted will be available to the public, unless it meets one of the exemptions created by the state's public disclosure law. As resources allow our intent is to post reported information on the internet, unless the information is exempted by the state's public disclosure law.

6. Four different views were presented regarding the inclusion of cadmium, lead and phthalates to the reporting list of chemicals. The positions expressed include:
- a) All these chemicals should be included;
  - b) Any of these chemicals that are not also being reported due to federal law should be included
  - c) Any of these chemicals where the federal reporting requirement appears to be inadequate; or
  - d) None of these chemicals should be included as they are already being addressed by federal requirements.

The preliminary draft rule includes cadmium on the reporting list since the federal government, through the Consumer Product Safety Commission, has not developed rules to address cadmium as promised when the CPSIA was passed. In addition, cadmium is a PBT chemical, (i.e. it is persistent, bio-accumulates and is toxic) and is a high priority for the agency. Lead and phthalates are not included in the preliminary draft rule because the CPSIA addresses these chemicals in children's products.

7. Two different views were expressed regarding what information is reported:
- a) The reported information should be the concentration of the chemical of concern based on the weight of the entire product; or
  - b) The reported information should be the concentration of the chemical of concern based on the weight of the product component which contains the chemical.

The preliminary draft rules require manufacturers to report on their use of chemicals of concern in product components. Reporting based on the weight of the entire product would allow the chemical of concern to be diluted by the other materials in the product. Such an approach does not provide useful information regarding opportunities to identify and switch to safer alternatives.

By focusing on the concentration of chemicals of concern in product components, both the manufacturers and Ecology will have a better understanding of where real opportunities exist to reduce the use of chemicals of concern. Just as importantly, product components are not specific to a single product. A component could be tested once and then used on multiple products. If safer alternatives to chemicals of concern can be found for a single product component, many products could be impacted.